



# Commonwealth of Massachusetts State Ethics Commission

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## CONFLICT OF INTEREST OPINION EC-COI-90-17

### Facts:

You were recently elected to the General Court and will take office in January 1991. You are also the president and owner of ABC, a specialty business. You believe that some of your business clients may either do business with state agencies or may be affected by legislation which comes before the General Court.

### Questions:

1. May you participate as a member of the General Court in legislation which affects companies with which ABC does business?
2. May ABC continue to do business with companies which contract with state agencies?

### Answer:

1. Yes, subject to certain conditions.
2. Yes, subject to certain conditions.

### Discussion:

As a member of the General Court, you will be considered a state employee for the purposes of G.L. c. 268A.

1. Participation in Legislation

As a state employee, you must abstain from official participation<sup>i</sup> in any particular matter<sup>ii</sup> in which either you or ABC has a financial interest. The propriety of your sponsorship, advocacy, voting and participation in connection with the enactment of any legislation will turn on (1) whether bill is a particular matter within the meaning of section 1(k) and (2) whether either you or ABC has a financial interest in the enactment of the bill.

#### (a) Particular Matter

Each decision or determination made by a state agency, including the General Court, is a particular matter unless an exemption applies. With respect to the legislative

enactment process, the definition of particular matter expressly excludes the enactment of general legislation and implicitly retains the inclusion of special legislation. It has therefore been well established under Commission and Attorney General precedent that the enactment of special legislation is a particular matter for the purposes of section 1(k). EC-COI-82-169; Attorney General Conflict Opinion No. 578.

The feature which distinguishes special from general legislation is the particularity of the scope and purposes of the act's provisions. See, Sands, 2 Sunderland Statutory Construction section 40.01 et seq. (4<sup>th</sup> ed., 1973). For example, in EC-COI-85-69, the Commission concluded that proposed comprehensive legislation creating a permanent development bank to provide assistance to all cities, towns and counties as well as to the Commonwealth was general legislation, in light of the permanence and general application of the act's provisions. The Commission reached a similar result in EC-COI-82-153 with respect to a proposed bill permitting the State Racing Commission to conduct off-track betting in those communities which accepted the provisions of the act. As a general rule, legislation which is intended to be permanent, which amends the General Laws, and which establishes rules which are uniformly applicable to all individuals or organizations similarly situated will be regarded as general legislation.

On the other hand, legislation which is temporary, which does not amend the General Laws, and which creates an exception or special rule which does not apply to other similarly situated individuals or organizations will be regarded as special legislation. For example, in EC-COI-85-69, the Commission concluded that a bill increasing the bonding authorization for a state authority and creating an exemption from the existing bond authorization process was a special bill, given the limited scope and purpose of the legislation. Similar results have been reached in EC-COI-80-46 (legislation transferring state-owned land in a municipality), 80-9 (annual budget approval for line item in county budget), 82-175 (home rule legislation affecting the payment by one municipality of retirement supplements to its retired employees). Moreover, legislation which practically affects a single community is regarded as special legislation, even where the act is drafted in more general terms, see, *Belin v. Secretary of the Commonwealth*, 362 Mass.530, 534-535 (1972) or where it is inserted as a condition restricting the receipt of local aid funds by a particular community. *Mayor of Boston v. Treasurer and Receiver General*, 384 Mass. 718, 722-724 (1981). See, EC-COI-89-8.

#### (b) Financial Interest

On order to invoke the abstention requirements of section 6, the particular matter must be one in which you or ABC has either a direct or reasonably foreseeable financial interest. EC-COI-84-96. Financial interests which are too remote or speculative do not require disqualification under G.L. c. 268A. EC-COI-87-16; 87-1. For example, the fact that special legislation might affect an ABC client does not necessarily mean that ABC has a foreseeable financial interest in the legislation. You must therefore ascertain,

prior to participation, whether any piece of special legislation would have a reasonably foreseeable affect on ABC'S financial interest.

Assuming that the legislation is either general or does not have a reasonably foreseeable financial impact on you or ABC, you may participate in the legislation. To dispel any appearance that your official actions as a legislator may be unduly affected by your business clients' interests in the legislation, you should publicly disclose in writing to either the Clerk or the Ethics Commission, prior to participation, the relevant facts concerning the legislation and its impact on ABC clients: G.L. c. 268A, section 23(b) (3).

## 2. ABC Business with Companies which Contract with the State

As a state employee and State Senator, your private business activities are subject to two restrictions under G.L. c. 268A. The first, section 4, prohibits you from personally appearing for compensation on behalf of ABC before any state agency in connection with any contract made by a state agency. This section applies only to your activities and does not limit the ability of ABC business clients to appear before or apply for contracts with state agencies.

The second, section 7, prohibits you from having a financial interest, direct or indirect, in a contract made by a state agency. For example, section 7 would prohibit ABC from providing services under a subcontract to a company which in turn is providing the work under a state contract. IN such a case, you as the owner of ABC would have an indirect financial interest in the company's contract with the state.<sup>iii</sup> On the other hand, the fact that an ABC business client is also a state vendor does not necessarily mean that you have a financial interest in that vendor contract. EC-COI-83-173. As long as your services for a business client are independent of any contract the client has with a state agency, you will not violate section 7.

DATE AUTHORIZED: December 12,1990

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<sup>i</sup> "Participate," participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. G.L. c. 268A,section1(j)

<sup>ii</sup> "Particular matter", any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, section1 (k).

<sup>iii</sup> In light of your substantial proprietary interest in ABC, you would not qualify for an exemption under section7(c) permitting certain contracts involving companies in which a legislator owns less than ten percent share.